

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

JOSEPH TURBERG

§

v.

§

CIVIL ACTION NO. 6:11cv402

TDCJ

§

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Plaintiff Joseph Turberg, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights during his confinement in the Gregg County Jail. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On August 8, 2011, the Magistrate Judge ordered Turberg to pay the statutory \$350.00 filing fee or to submit an inmate trust account data sheet which was certified by an official in the institution in which he was confined, pursuant to 28 U.S.C. §1915(b). Turberg filed an application for leave to proceed *in forma pauperis* on August 30, 2011, but did not include a data sheet; instead, he made notations on the form, and submitted an attached pleading, which in effect demanded proof that federal law applied to him and argued that through a document called a “conditional acceptance for value,” the amount of the filing fee could be “adjusted to zero.”

On October 26, 2011, the Magistrate Judge issued a Report recommending that the lawsuit be dismissed without prejudice for failure to prosecute or to obey an order of the Court. The Magistrate Judge correctly determined that none of Turberg’s assertions provided any valid justification for the failure to pay the filing fee or to properly seek leave to proceed *in forma pauperis*. A copy of this Report was sent to Turberg at his last known address, return receipt

requested, but no objections have been received; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has carefully reviewed the pleadings and documents in this case, as well as the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 10) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED without prejudice for failure to prosecute or to obey an order of the Court. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

It is SO ORDERED.

SIGNED this 30th day of November, 2011.


MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE